

MICHIGAN HOUSE OF REPRESENTATIVES
FINANCIAL LIABILITY REFORM COMMITTEE

STATEMENT OF PROFESSOR ROBERT A. SEDLER
RE BALANCED BUDGET AMENDMENT

MEMBERS OF THE COMMITTEE:

I am Distinguished Professor of Law at Wayne State University. I have been at Wayne State since 1977 and have been teaching law for over 50 years. My main field is Constitutional Law. I have published extensively in my field, including a book, **CONSTITUTIONAL LAW IN THE UNITED STATES** (2012). I am submitting for your consideration the following statement re a proposed call for a convention to consider an amendment to the Constitution of the United States requiring that the government of the United States operate pursuant to a balanced budget.

Article V of the Constitution deals with amendments to the Constitution. It provides as follows: "The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one of the other Mode of Ratification may be proposed by the Congress..." While the Convention method of amending the Constitution is authorized by Article V, it has never been used. There are very good reasons why this is so.

The matter of calling a Convention to amend the Constitution by providing for a balanced budget amendment is nothing new. It was around over 50 years ago when I was a young law professor at Saint Louis University. A number of state legislatures had adopted resolutions asking Congress to call a Convention to consider a balanced budget amendment. The resolutions were not uniform. Some of the resolutions provided that the Convention could only consider a balanced budget amendment and nothing else. Others were more general, simply asking Congress to call a Convention. I recall testifying before the Missouri Legislature, where I stated that there had been no experience with a Convention to amend the Constitution. I further stated that even if two-thirds of the states had submitted applications, Congress was not required to act on them and could simply ignore them. Finally I pointed out that if the Convention decided to go beyond proposing a balanced budget amendment and proposed amendments to other provisions, such as the Bill of Rights, those amendments, if ratified by three-fourths of the states, would now become a part of the Constitution. The matter died after two-thirds of the states did not adopt resolutions calling for a Convention. What goes around sometimes comes around, and I would say the same thing to the Michigan Legislature today as I said to the Missouri Legislature over 50 years ago.

Even if two-thirds of the states passed identical resolutions asking Congress to call

a Convention to consider a balanced budget amendment, Congress could simply ignore the resolutions. That is, a federal court would not have the constitutional power to order Congress to call the Convention. It is well-settled that all matters relating to amending the Constitution are what is called "political questions," so that the federal courts cannot constitutionally decide such questions. This means that the Constitution, by the terms of Article V, has committed all questions relating to amending the Constitution to Congress and not to the federal courts. So, Congress could and likely would simply ignore the applications to call a Constitutional Convention to consider a balanced budget amendment.

Second, in the unlikely event that Congress would decide to call a Constitutional Convention, it could become a "runaway convention," where the delegates would propose changing the Constitution as we know it, such as repealing the Bill of Rights. It will be recalled that the present Constitution was the result of a "runaway convention." The delegates met in Philadelphia in the summer of 1787 only for the purpose of considering amendments to the Article of Confederation, which had governed the states since the end of the Revolutionary War. Once they gathered in Philadelphia, the delegates decided to scrap the Articles of Confederation and instead to adopt a new Constitution for the "United States of America." Once this new Constitution was ratified by nine states, the United States of America came into being, and this is the Constitution we live under today.

In American constitutional theory, the Constitution emanates from the People of the United States. The Preamble to the Constitution begins, "We the People of the United States," and ends with "do ordain and establish this Constitution for the United States of America." The Constitution is considered to represent the "Supreme will of the People of the United States," and the People of the United States, through the Amendment process provided in Art. V of the present Constitution, can, as did the Framers of the present Constitution, decide to adopt a completely new Constitution. Thus, as a constitutional matter, there is no way that the Convention called in accordance with Art.V, could be limited to considering a balanced budget amendment. It could again be a "runaway convention," bringing to an end the Constitution as we know it.

In the final analysis, a resolution of the Michigan Legislature asking Congress to call a Constitutional Convention to consider a balanced budget amendment would have no legal effect whatsoever. It would hold the Michigan Legislature up to ridicule as having done a useless thing. What is even worse is that such a resolution would be seen by the Michigan citizenry as putting our present Constitution completely at risk. We do not need a new Constitution. The Constitution and the Bill of Rights have served this Nation well for over 200 years. If it needs to be amended, Art. V provides the means for amending the Constitution without putting the entire Constitution at risk. This can be accomplished by two-thirds of each House proposing an amendment for consideration and ratification by three-fourth of the states.

Thank you for your consideration of this statement.